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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/176,866 10/22/98 YOUNG

J 6996

001688 QM12/1217  
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EXAMINER

DEMILLE, D

ART UNIT

PAPER NUMBER

3764

3

DATE MAILED:

12/17/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/176,866

Applicant(s)

YOUNG, JAMES V.

Examiner

Danton DeMille

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 14) ☒ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 17) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other: .

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Claims 1-9 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. In claim 1, line 11, it is recited that the vacuum pump is connected to one of the massage head and the applicator however, the embodiment of the vacuum pump in connection with the ✓ message head doesn't appear to be disclosed. As shown in figures 5-8, the connection line 50 is at the applicator 40 not with the massage head 15.
- ✓ 3. In claim 5, there is no antecedent basis for "said valves".
- ✓ 4. In claim 8, there is no antecedent basis for "the power cable".
- ✓ 5. In claim 9, it is not clear what is meant by the vacuum connection being "attached as an applicator by quick connect device". How is a connection attached "as an applicator"?
- ✓ 6. In claim 12 it is not clear what is meant by "access lotion".
- ✓ 7. In claim 13, there is no clear antecedent basis for "section".
- ✓ 8. Claim 14 appears incomplete because it depends upon itself. It has been assumed claim 14 depends on claim 13.

### *Claim Rejections - 35 USC § 102*

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Holt. As shown in figure 2 there are a plurality of cavities for permitting skin to be drawn inwardly of it.
11. Claim 10 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by La Mere et al.

*Claim Rejections - 35 USC § 103*

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt.

Regarding claim 2, Holt appears silent with regard to any controls for the motor however, the ability to adjust the speed of the motor is well within the realm of the artisan of ordinary skill. It would have been obvious to one of ordinary skill in the art to modify Holt to provide speed control for the motor in order to adjust the vibration of the device. Regarding claim 3, it would have been obvious to one of ordinary skill in the art to modify Holt to provide a collection vile for the vacuum in order to catch any particulate matter from blowing all over from the motor. Holt show holes in the sides of the housing allowing any particulate matter to blow all over the area. Most vacuum cleaners have a collection means for capturing the particulate matter.

14. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt in view of Howerin. It would have been obvious to one of ordinary skill in the art to modify Holt to provide a second vile in the vacuum line to collect any liquid as taught by Howerin to catch any liquid to prevent damage or impairing its efficiency.

15. Claims 6-9 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt in view of Marshall et al. The motor system of Holt is very crude however, Marshall teaches a conventional vacuum massaging system which includes controls for both the vibrator and the vacuum source. It would have been obvious to one of ordinary skill in the art to modify Holt to use the motor control device as taught by Marshall to best control the operation of the device. If the vibration is too much in Holt turning down the speed of the motor would also turn down the effectiveness of the vacuum. Such would be undesirable if one is to maintain a strong suction with a lower vibration.

16. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 18 above, and further in view of Howerin. It would have been obvious to one of ordinary skill in the art to further modify Holt to provide a second vile in the vacuum line to collect any liquid as taught by Howerin to catch any liquid to prevent damage or impairing its efficiency.


17. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over La Mere et al. in view of Robinson. Robinson teaches in column 2, lines 66-69 the provision of including applying lotion to the body. It would have been obvious to one of ordinary skill in the art to modify La Mere to also use lotion as taught by Robinson to aide in the movement of the device over the skin. Regarding claim 12, the suction force would inherently remove excess lotion from the body.


18. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holt in view of La Mere et al. It would have been obvious to modify Holt to also use the device over other parts of the body other than just the scalp as taught by La Mere for the added benefit of massaging other parts of the body.

19. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt in view of La Mere et al as applied to claim 10 above, and further in view of Robinson. It would have been obvious to one of ordinary skill in the art to further modify Holt to also use lotion as taught by Robinson to aide in the movement of the device over the skin.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt in view of La Mere and Robinson as applied to claim 12 above, and further in view of Marshall et al.

As noted above, it would have been obvious to one of ordinary skill in the art to further modify Holt to use the motor control device as taught by Marshall to best control the operation of the device.

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